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Supreme Court, U.S.
FILED
JUN 13 2008
OFFICE OF THE CLERK

No. 07-1313

**IN THE**
**SUPREME COURT OF THE UNITED STATES**

GRETA CRAWFORD,

*Petitioner.*

v.

UNITED STATES DEPARTMENT OF HOMELAND SECURITY, UNITED STATES OF AMERICA,

*Respondents.*

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Fifth Circuit

# RECONSIDERATION PETITION FOR WRIT OF CERTIORARI

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## REHEARING

### I. INTRODUCTION

Petitioner applied to the Immigration and Naturalization Service, ["INS"], currently part of the Department of Homeland Security, ["DHS"]. Employment was denied for suitability. DHS and the United States [collectively INS or "Respondent"] were sued.

Suitability determinations are reserved for best-qualified applicants. 5 CFR s. 731.103(d). 5 USC 7703(c) overturns determinations made without substantial evidence. Notwithstanding proof, findings are not sustained when they violate procedure or laws. Id. These laws include prohibited practices such as retaliation or discrimination. Eg., 5 USC s. 2302. Among other things, charges are not justifiable unless recent or severe. 5 CFR s. 731.202(c).

A radical departure from the Civil Service Reform Act ["CSRA"], INS relied on a revision to 5 CFR s. 731.501 for the untenable proposition that there would be no enforcement of laws that disproved agency charges, and no enforcement of laws that prohibited an agency's legal and procedural violations. Petition p. 3, 7 ["P"-3,7].

The Petition argued 501 usurped judicial review, and was not supported by the intent of the drafting agency or Congress. P-14-16. The court's deference standard was dormant for

decades. P-16-19. 501's results were so bizarre that Congress could not have intended it. P-19. Bizarre:

1) Respondent was not required to meet its burden of proof or to provide admissible, non-hearsay evidence from witnesses with personal knowledge. P-19-25. 2) Directly inconsistent with *Folio v. DHS*, 402 F3d 1350 (Fed. Cir. 2005), review of factors was eliminated that determined whether charges were relevant or with just-cause. P-25-28. 3) 501 caused cumulative and recurrent penalties that were not grounded in suitability considerations like the charge's severity or recency. P-7-n.4, P-28-29. 4) The exhaustive remedies of the CSRA were limited by an arbitrary dismissal, and because 501 limited proceedings to proof of agency charges. P-29-32. 5) 501 excused Respondent from compliance with law and procedure. P-32-46. Of those claims that were arbitrarily acknowledged, 501 rendered them meaningless since essential elements of claims relied on violations. Id. For instance, pretext in discrimination can be shown by an agency's violations of the CSRA.

## II. GROUNDS FOR REHEARING

Rehearings must be based on substantial intervening or non-presented grounds. This Rehearing argues that retaliation and fixing, not just judgment, motivated rulings. Intervening acts, Respondents again ambushed Petitioner

after she filed the Petition. Civil service regulations against coercion, reprisals, unfair treatment and retaliation for taking discrimination claims are substantial grounds because these violations overturn the suitability determination under 7703(c). Discrimination claims expressly require de-novo review. Id. Also, *CBOCS West Inc. v. Humphries*, No. 06-1431, ___ US ____, (May 27, 2008) was resolved.

## III. FACTS

A. Early Litigation

Just before the suitability case, Petitioner moved to Texas and sued the government in 1/01 for groundless detentions and employment interference. P-10-11. The sealed suit was leaked to federal job interviews and elsewhere. Id. *Frank v. Xerox*, 347 F.3d 130, 136 (5th Cir. 2003) (ongoing violations). In 4/01, a document was removed from the court record, the seal was breached right after starting as a temporary, and Petitioner was seized days after reporting the incident. P-10,n.7. The 4/01 seizure was expunged. Id. Petitioner filed a claim against the court about the document, and against the city about 4/01. P-24,n.14.

Privacy Act, 5 USC s. 552a, responses showed the government falsely maintained other's records under Petitioner's identity. P-28.

B. Improper Charges

Once the suitability matter began with the 1/02 application, charges included issues that Petitioner complained about in her 1/01 suit and later claims, as if to discredit Petitioner's allegations. INS was prohibited by 2302(b)(10) from making charges based on dismissals. P-6-7,n.3-4. Improper charges included a dismissed 1996 DC matter,[1] and the 4/01 expunged Texas matter, where no charges were leveled by Texas and no proceeding was held or warranted. P-10,n.7. INS lost the charges at the Board, but false portrayals continued.[2]

C. Court Conduct

Showing motive, recusals were refused under generally mandatory conditions -- a claim against the court for document loss, and participation as a government lawyer in the claim against the city for 4/01. P-24,n.14. Notwithstanding proof the clerk worked on a

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[1] The DC arrest was unreasonable. P-10,n.6. After the 1/01 sealed and unserved filing, Petitioner began receiving answering machine messages for years. 1/3/06 Motion (tape).

[2] The expunction did not support being "found" head-banging. App-3. P-10,n7. See also, P-36-41 (medical-exam passage), P-40 (report).

case with the same 4/01 facts at bar,[3] the courts found to the contrary, as if 4/01 was not pertinent to Petitioner's claims of retaliation. App-31.

Transcripts were cut and the record stripped of hundreds of pages of various documents and evidence that Petitioner refiled. P-13-n.9. Also, a clerk said she would file the second amended complaint when another refused. Proof of filing was made. P-32,n.21. Refusal to file and record destruction are prohibited. Fed.R.Civ.P. 5(d)(4). 18 USC s. 1512(c)(1).

D. Leaks, Reprisals and Coercion

Outrageous, information and misinformation about the sealed Board record were leaked to those without any association to the case. Only the government had access. *Phillips v. Allegheny County*, 515 F.3d 224 (3rd Cir. 2008) (government leaks). Planting caused an otherwise uninvolved, armed third-party to irrationally demand case information. P-11,n.8.

Consistent with prior misconduct in the 1/01 case, where there was no local jurisdiction, local police insinuated themselves into the case by accessing

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[3] A 7/23/01 letter from the clerk, then an assistant city attorney, states: "letter responds to your claim . . . as a result of an incident . . . on April 21, 2001 . . . I am denying the claim."

The suitability and 4/01 city facts pertain to the same incident, there being no other 4/01 city issue.

sealed documents. *Martindell v. Int. Tel.&Tel.*, 594 F.2d 291, 294 (2nd Cir 1979). Various distributions violated investigative authorizations, privacy laws, and the CSRA.

Misconduct was concentrated in workplaces, often new. As the Petition described, Petitioner was directly confronted without warning by federal personnel and others. Petitioner was also indirectly confronted with leaks to coworkers, witting and unwitting, at an insurer, roofer, fundraiser, publisher, financial company and others. P-10-13. Media types occasionally appeared.

The workplaces were otherwise uninvolved, the background investigation having covered employers from seven years before the investigation's close in 10/02. P-11,13. Many Pre-2002 employers that were relevant to the suitability report and investigation period were in other states.

While the case pended, reprisals occurred for years as jobs changed. Although many seals were foregone in district court, INS culpability remained for peddling the case and misinformation to the disinterested, and for inciting tampering, harassment, intimidation, and invasion of privacy, among other things like potential subornation of future applications.

Dismissals were not instructions for additional reprisals. INS and DOJ employees entered a

workplace and commented on pleadings, though Petitioner was the only party present.

By 3/07, parties filed 5th Circuit briefs and INS counsel began appearing in-person.[4]

PCI managers locked themselves in an office when INS counsel entered. Once, an ambulance awaited. Premeditated, counsel pretended to be on a case against his accomplice (possible coworker), who feigned being a doctor. (Before the Circuit appeal, certain post-2002 employers and others drove across town to barge into a confidential mediation. They were strangers or mild-to-remote acquaintances.)

Petitioner started at a financial company in 5/07, where within weeks, Respondent's counsel and others arrived and ended up at Petitioner's home. Among other things, Respondent's counsel threw a kitten over a railing, and pointed a gun at Petitioner as she held an animal. Others entered. A corroborating third-party affidavit filed with the Petition showed Respondent's counsel writhed about in another caper at the company. Phony warrants for some were produced without signatures and charges. The

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[4] Some entries were physically intimidating. Like other intruders, INS counsel went to the nearly empty roofer one night, before the district court filings, and before Petitioner formally met him. Despite requests to leave, people ran into the US Attorney's conference room when Petitioner formally met counsel.

discrimination claims reverse determinations. 5 USC ss. 2301-02, 7703(c). 42 USC ss. 12188, 12203.

Acts after the district court 6/13/05 and 8/2/06 dismissals were not subject to trial-level scrutiny. Hearing the Petition or simply remanding would curb the potential for Petitioner's subsequent litigation against federal employees, individually and officially, and/or against others for claim/property or contract interference, and retaliation, among other things.[7] *CBOCS*. Cf., *NLRB v. Southwire*, 429 F.2d 1050, 1054 (5th Cir. 1970) (unfair labor practices; surveillance).

Under civil service laws, DHS retaliated by repeatedly pulling in numerous post-2002 employers for years, long after the suitability investigation ended in 2002. 5 USC ss. 2301-02. See, *Brown v. Nationsbank*, 188 F.3d 579, 591-92

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[7] Federal officials are not immune when they violate constitutional rights, or when they act outside their authority or the scope of presenting or judging a case. *Butz v. Economou*, 438 US 478 (1978). See also, *Bad Elk v. US*, 177 US 529 (1900). 18 USC s. 242. Petitioner's constitutional rights include redress, the 4th Amendment, equal protection, privacy, travel, family, and liberty interests in safety, reputation, and livelihood. Eg., *Gillet v. King*, 931 F.Supp. 9, 14 (DDC 1996) (liberty interests include stigmatization). In subsequent litigation, some could seek contribution or their own claims against Respondents. E.g., *Bass v. Parkwood*, 180 F.3d 234, 242 (5th Cir. 1999) (government liability for conduct caused by government encouragement or harassment).

(5th Cir. 1999) (pretensive "boondoggle"). Likewise, cut transcripts and various other court actions were retaliatory. Respondent's did no discovery over acts from before the district court proceeding ended.[8] Reprisals continued.

Both improper, there were no checks on judicial and executive conduct. Petitioner was denied due process requirements of notice and a *meaningful* opportunity to be heard. *Gillet p.* 15. Timing of ambushes after appeals caused no day in court.

B. Uncorrected, Simple Errors

Rulings were contrary to reason and evidence. Simple objective facts require no inferences. Post-judgment briefs and the appeal provided ample opportunity for reflection and correction. Deliberateness is inferred from the refusal to correct the simple, though material and reversible errors. *Miller v. Pate*, 386 US 1 (1967). *US v. Blueford*, 312 F.3d 962 (9th Cir. 2002) (reversal for presentation of government's knowing false inferences).

Respondent's violations, often in writing, should

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[8] Cf., *NLRB v. Neuhoff*, 375 F.2d 372, 376-78 (5th Cir. 1967) (improper questioning). In this case, techniques were not just improper. Mindless trampling, ambushes lacked any character of scheduled and standard discovery or meetings.

have been resolved in Petitioner's favor. P-5-7, 16,n.10. Other deliberate and material, simple errors include the following:

1. Certain errors are clear from the decisions four corners. The district court claimed there was no evidence of persons hired outside the protected classes for the disparate treatment claim, but pages later, for the disparate impact claim, the court discussed that evidence. 8/2/06 Order p. 14. Id p. 18, ("233 applicants in Texas hired . . . 13 were African-American). In another example, the decision claims "no evidence that a male applicant was hired" p. 20, but at p. 22 states, "66 or 28% were female."

Reversal was warranted since the crux of the dismissal was the absence of that prima facie evidence (notwithstanding the dicta about other matters for the jury). P-33. A post-judgment brief demonstrated the error was not a disputed fact. If remanded, a jury would determine whether the personnel action was the product of discrimination. Discrimination need only be a contributing, not sole cause for the personnel action. 42 USC s. 2000e2(m).

2. Parties present evidence.[9] However, the

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[9] Cf. ABA Model Code of Judicial Conduct, Cannon 3, section 7, Commentary. "A judge must not independently investigate facts in a case and must consider only the evidence presented."

summary judgment order, sua sponte, claimed statistics for the disparate impact claim had to be based on a special skills group. P-37. After the unexpected ruling, Petitioner attached INS criteria stating general experience applicants qualified for the entry-level position. P-37-n.23. A simple objective fact, Respondent and the courts also inaccurately and repeatedly claimed the business practice causing statistical disparities was the background investigation. P-38. The Petitioner's delineated business practices actually included, among other things, changing charges from the notice letter, and the solicitation of testimony without personal knowledge. Id. Eg., P-16,n.10.

3. Respondent's repeated claims of non-exhaustion were false. Complaint and opposition attachments proved exhaustion.[10] P-29-30,n.16. The Board expressly ruled on a claim later deemed unexhausted. 12/19/03 Board p. 12-13 (due process). Exhaustion occurred. Claims could not be preempted by the CSRA because they were raised under it and covered by its comprehensiveness. P-29-31.

4. Direct evidence of disability discrimination included report remarks, and the investigator's testimony that they used facially non-neutral questioning. P-34-35, 40.

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[10] Facts occurring after the Board needed no exhaustion or were exhausted on various grounds. P-29-n.16.

C. Inferences In Petitioner's Favor

In light of reprisals and refusal to correct simple, material errors, rulings based on inferences should also be called into question as not being the product of law or reason. For instance, statistical disparities in the disparate impact claim were substantial. No disabled persons were hired, half the blacks and women that could have been hired were not, and hispanics were hired at 63%. P-38,n.25.

Another reasonable inference was that evidence for charges was unreliable. Respondent's only evidence was the background report where investigators summarized interviews with old employers and others. P-3, 20-25. Petitioner's documents and sworn witness statements impeached the report, some interviews having never occurred. Id.

Inferences about charges should also have been drawn in Petitioner's favor. INS was required to prove a termination for negligence or misconduct for the reasons stated in the notice letter -- tirades and mistrust in government. But the other report summaries from numerous employers did not make the allegations. The courts knew that the only INS evidence -- the hearsay report -- was directly contradictory to the employer's actual documents showing he did not allege tirades and mistrust, and that the termination letter, with the employer's own,

different allegations, was affirmatively withdrawn in writing by the employer. P-23,26. The termination was no-cause. Precedent showed the agency cannot complain where the employer does not. P-6-23.

Also, respecting the citation, courts knew INS withdrew their allegation that there was a confession. P-23-24,n.13. The courts also knew from precedent, the statute, and evidence that 1) where there is no trial transcript or tape for appeal, reversal is required; 2) the misdemeanor statute required no arrest and was categorized as the lowest level in the state; 3) intoxication was found for no shoes, but proof of intoxication required affected speech or motor skills; and 4) there were no intoxication tests, no police reports or lists of facts or witnesses, or intoxicants present. P-26-28.

Furthermore, charges were based on suspicious incidents that unreasonably cut-off opportunities. At the employer and at another Nevada firm, Petitioner was harassed by DOJ. For the citation, Petitioner was taken to Virginia against her wishes, an ultra vires procceding ensued, internal affairs investigated, and the arrest was right after an employer/judge died. P-27-28.

Where charges are believed, they are frivolous under 202(c) and non-disqualifying under OPM criteria. P-25-28. Charges were not just-cause under agency criteria and should be reversed on that grounds alone. Respondents had no case.

Reversal of either civil service charge reverses the determination under 501. The conclusions were unbelievable, especially in light of reprisals. In addition to un-redressed injuries that already ruined Petitioner, OPM categorizes unsuitability determinations as major issues for future applications.

## V. CONCLUSION

A manifest injustice was done that calls into question the integrity of the civil service, courts and executive branch.

Respectfully Submitted, June 13, 2008,

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No. 07-1313

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UNITED STATES DEPARTMENT OF HOMELAND SECURITY, UNITED STATES OF AMERICA,
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Rehearing
On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Fifth Circuit

**CERTIFICATE OF COMPLIANCE WITH SUPREME COURT RULE 44**

As required by Supreme Court Rule 44.2, I certify that the Rehearing is restricted to the grounds specified in the above rule and that it is presented in good faith and not for delay. See, 12/14/04 Order (penalty expired).

I declare under penalty of perjury that the foregoing is true and correct.

Executed on June 13, 2008

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